

AMENDED IN SENATE JULY 2, 2008

AMENDED IN ASSEMBLY MAY 23, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 3050

**Introduced by Committee on Judiciary (Jones (Chair), Evans,
Feuer, Krekorian, Laird, Levine, and Lieber)**

February 28, 2008

An act to add Article 9.6 (commencing with Section 6159.5) to Chapter 4 of Division 3 of the Business and Professions Code, *and* to add Sections 755.1 and 755.2 to the Evidence Code, ~~to amend Sections 68085.3, 68085.4, 70611, 70612, 70613, 70614, 70621, 70650, 70651, 70652, 70653, 70654, 70655, 70656, 70658, and 70670 of the Government Code, to amend Section 103470 of the Health and Safety Code, and to amend Section 7660 of the Probate Code, relating to courts.~~ *relating to legal services.*

LEGISLATIVE COUNSEL'S DIGEST

AB 3050, as amended, Committee on Judiciary. Legal aid: court interpreters.

(1) Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law provides that it is the duty of an attorney to, among other things, never reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed. Existing law provides that a lawyer may fulfill his or her ethical commitment to provide pro bono services, in part, by providing financial support to organizations providing free legal services to persons of limited means.

This bill would prohibit a person or organization that is not a legal aid organization, as defined, from using the term “legal aid,” or any variant or similar name in any firm name, trade name, fictitious business name, or other designation, or on any advertisement, letterhead, business card, or sign. The bill would subject a person or organization that violates this prohibition to specified civil liability.

(2) Existing law provides that in any action or proceeding under specified provisions of the Family Code relating to domestic violence, in which a party does not proficiently speak or understand the English language, and that party is present, an interpreter shall be present to interpret the proceedings in a language that the party understands, and to assist communication between the party and his or her attorney, except that a court may issue prescribed orders ex parte without an interpreter. Existing law specifies that the fees of interpreters in a civil case shall be paid by the parties, except that in the above civil cases those fees shall be waived for parties who need an interpreter and appear in forma pauperis. Existing law gives the Judicial Council specified duties with regard to these provisions. ~~Existing law establishes specified uniform filing fees for civil actions, including a fee schedule for filing specified documents in connection with a trust or estate, and provides for the deposit of specified fees in the Trial Court Trust Fund.~~

This bill would require any civil action or proceeding, in a county determined by the Judicial Council, as specified, in which a party does not proficiently speak or understand the English language and the party is present, except as specified, to have present an interpreter to interpret the proceedings in a language that the party understands and to assist the party in communicating with his or her attorney and the court. The bill would provide that the fee for interpreters mandated by this requirement be paid by the court, and would allow for priority guidelines for interpreter staffing in the event of insufficient funds or interpreters. The bill would require the Judicial Council to develop an implementation plan, a model pilot program, and training guidelines for interpreters related to those provisions, as specified. The bill would also provide that, if a party is charged a fee for interpreter services because sufficient funding or number of interpreters is not available any fees for the interpreter shall be waived for a party who appears in forma pauperis, but would authorize the court, if the party prevails, to assess those fees in the action as specified. The bill would require the Judicial Council to conduct a study of the need for court reporters in civil proceedings and the extent to which the need is being met by the above provisions

and would require the Judicial Council to report its findings and recommendations to the Governor and the Legislature on or before March 1, 2011, and every 3 years thereafter. ~~The bill would increase specified uniform filing fees by \$10, the revenue of which would be deposited into the Trial Court Trust Fund for use by courts providing civil interpreters. The bill would eliminate the fee schedule for filing specified documents in connection with a trust or estate and replace it with a set filing fee.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:
3 (a) California is emblematic of the American dream, a place of
4 stunning natural beauty, a seat of international commerce, and a
5 land of unparalleled opportunity. As a result, California is the most
6 populous and demographically diverse state in the nation, a meeting
7 place of cultures, ethnicities, and ideas unlike any other in the
8 world. Of the state's 34 million people, about 26 percent (roughly
9 8.8 million people) are foreign born. Californians speak more than
10 220 languages, and 40 percent of the state's population speaks a
11 language other than English in the home. This extraordinary
12 diversity is among the state's greatest assets and has helped make
13 California an international leader in business, the arts,
14 entertainment, engineering, medicine, and other fields. The state's
15 diversity also poses unique challenges for the delivery of
16 government services, particularly for the courts.
17 (b) For Californians not proficient in English, the prospect of
18 navigating the legal system is daunting, especially for the growing
19 number of parties who do not have access to legal services and
20 therefore have no choice but to represent themselves in court,
21 which is a virtually impossible task for people who are unable to
22 understand the proceedings. Nearly seven million Californians
23 cannot access the courts without significant language assistance,
24 cannot understand pleadings, forms, or other legal documents,
25 cannot communicate with clerks or court staff, and cannot
26 understand or participate meaningfully in court proceedings, much
27 less effectively present their cases without a qualified interpreter.

1 People with limited English proficiency are also often members
2 of groups whose cultural traits or economic circumstances make
3 them more likely to be subjected to legal problems, in part because
4 perpetrators recognize their victims' limited ability to access
5 judicial protection. It is essential to provide English learners and
6 other non-English-speaking litigants with interpreters in order to
7 provide full and equal access to our justice system without regard
8 to language.

9 (c) The Legislature has previously recognized that the number
10 of persons with limited English proficiency in California is
11 increasing and recognized the need to provide equal justice under
12 the law to all California residents and to provide for their special
13 needs in their relations with the judicial and administrative law
14 system. The Legislature has likewise recognized that the effective
15 maintenance of a democratic society depends on the right and
16 ability of its residents to communicate with their government and
17 the right and ability of the government to communicate with them.

18 (d) Inadequate resources to assist litigants with limited English
19 proficiency affect the court's ability to function properly, causing
20 delays in proceedings for all court users, inappropriate defaults,
21 and faulty interpretation that can ultimately subvert justice. Court
22 interpreter services are a core court function. Our judicial system
23 relies on the adversarial process in which neutral arbiters decide
24 disputes based upon competing presentations of facts and law.
25 Conducting court proceedings when one party is incapable of fully
26 participating significantly impairs the quality and efficiency of the
27 process and its results, including compliance with court orders.
28 The courts have made significant efforts to assist litigants with
29 limited English proficiency, including steps to increase the number
30 of certified and registered interpreters and to provide interpreters
31 in civil cases, if resources are available. Nevertheless, court
32 proceedings are required to be conducted in English, and most
33 crucial court forms and documents are available only in English,
34 while the number of skilled interpreters has actually declined over
35 the past decade and the number of persons requiring interpreter
36 services has increased. As a result, a qualified interpreter is not
37 provided in most civil proceedings.

38 (e) The inability to respond to the language needs of parties in
39 court impairs trust and confidence in the judicial system and
40 undermines efforts to secure justice for all. The authority of the

1 courts depends on public perceptions of fairness and accessibility.
2 Any significant erosion of public trust and confidence in the
3 fairness of judicial outcomes threatens the future legitimacy of the
4 legal system. By excluding a large segment of the population from
5 participation in an institution that shapes and reflects our values,
6 we threaten the integrity of the judicial process. Resentment
7 fostered by the inability to access the benefits of the court system
8 can ultimately impair enforcement of judicial decrees and attenuate
9 the rule of law.

10 (f) Reliance on untrained interpreters, such as family members
11 or children, can lead to faulty translations and threaten the court's
12 ability to ensure justice. Court interpretation is extremely difficult
13 and takes a rare combination of skills, experience, and training.
14 Apart from the possibility of fraud, unqualified interpreters often
15 fail to accurately and comprehensively convey questions and distort
16 testimony by omitting or adding information, or by stylistically
17 altering the tone and intent of the speaker, thereby preventing
18 courts from hearing the testimony properly. These problems
19 compromise the factfinding process and can result in genuine
20 injustice.

21 (g) An overwhelming number of Californians believe that
22 interpreters should be made available to assist non-English speakers
23 in all court proceedings, and that interpreters should be provided
24 free of charge to low-income non-English speakers.

25 (h) California law currently mandates appointment of an
26 interpreter for all witnesses in civil cases, and for parties with
27 hearing impairments. In addition, California statutes mandate the
28 appointment of an interpreter in adjudicative proceedings before
29 state agencies, boards, and commissions at no charge to the parties
30 whenever a party or the party's witness does not proficiently speak
31 or understand English. Other states, by contrast, provide both
32 witnesses and parties with a right to a court-appointed interpreter
33 in all civil matters at no cost to the party.

34 SEC. 2. It is the intent of the Legislature to encourage the
35 provision of pro bono legal services and financial support of
36 nonprofit legal organizations that provide free legal services to
37 underserved communities.

38 SEC. 3. Article 9.6 (commencing with Section 6159.5) is added
39 to Chapter 4 of Division 3 of the Business and Professions Code,
40 to read:

Article 9.6. Legal Aid Organizations

6159.5. The Legislature hereby finds and declares all of the following:

(a) Legal aid programs provide a valuable service to the public by providing free legal services to the poor.

(b) Private, for-profit organizations that have no lawyers have been using the name “legal aid” in order to obtain business from people who believe they are obtaining services from a nonprofit legal aid organization.

(c) Public opinion research has shown that the term “legal aid” is commonly understood by the public to mean free legal assistance for the poor.

(d) Members of the public seeking free legal assistance are often referred by telephone and other directory assistance information providers to for-profit organizations that charge a fee for their services, and there are a large number of listings in many telephone directories for “legal aid” that are not nonprofit but are actually for-profit organizations.

(e) The Los Angeles Superior Court has held that there is a common law trademark on the name “legal aid,” which means legal services for the poor provided by a nonprofit organization.

(f) The public will be benefited if for-profit organizations are prohibited from using the term “legal aid,” in order to avoid confusion.

6159.51. For purposes of this article, “legal aid organization” means a nonprofit organization that provides civil legal services for the poor without charge.

6159.52. It is unlawful for any person or organization to use the term “legal aid,” “legal aide,” or any variant or similar name in any firm name, trade name, fictitious business name, or any other designation, or on any advertisement, letterhead, business card, or sign, unless the person or organization is a legal aid organization.

6159.53. (a) Any consumer injured by a violation of Section 6159.52 may file a complaint and seek injunctive relief, restitution, and damages in the superior court of any county in which the defendant maintains an office, advertises, or is listed in a telephone directory.

(b) A person who violates Section 6159.52 shall be subject to an injunction against further violation of Section 6159.52 by any legal aid organization that maintains an office in any county in which the defendant maintains an office, advertises, or is listed in a telephone directory. In an action under this subdivision, it is not necessary to allege or prove actual damage to the plaintiff, and irreparable harm and interim harm to the plaintiff shall be presumed.

(c) ~~Attorney's~~ *Reasonable Attorney's* fees shall be awarded to the prevailing plaintiff in any action under this section.

SEC. 4. Section 755.1 is added to the Evidence Code, to read:

755.1. (a) In any civil action or proceeding in those specified counties to be determined by the Judicial Council as provided in subdivision (c) of Section 755.2, including, but not limited to, any family court proceeding, any proceeding to determine the mental competency of a person, or any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, in which a party does not proficiently speak or understand the English language, and that party is present, an interpreter shall be present to interpret the proceedings in a language that the party understands and to assist communication between the party and his or her attorney or the court. This section does not apply to any arbitration ordered by the court under Title 9 (commencing with Section 1280), Title 9.1 (commencing with Section 1295), Title 9.2 (commencing with Section 1296), Title 9.3 (commencing with Section 1297.11), Title 9.4 (commencing with Section 1298), or Title 9.5 (commencing with Section 1299), of Part 3 of the Code of Civil Procedure. Notwithstanding this requirement, a court may issue an ex parte order pursuant to Sections 2045 and 7710 of, and Article 1 (commencing with Section 6320) of Chapter 2 of Part 4 of Division 10 of, the Family Code, without the presence of an interpreter. Unless a party has notified the court that he or she has made arrangements for a private interpreter, the court shall provide the interpreter. The interpreter shall be certified pursuant to Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code, except as provided in subdivision (c) of Section 68561 of the Government Code.

(b) (1) Notwithstanding Section 68092 of the Government Code, fees of interpreters utilized under this section shall be paid by the court.

(2) If sufficient funds are not available pursuant to the model pilot program specified in subdivision (c) of Section 755.2, or otherwise provided to meet the needs for court interpreters in all civil actions and proceedings, or if after diligent search a sufficient number of interpreters is not available for all civil actions and proceedings, interpreters shall be assigned in the following order of priority, subject to any rules that the Judicial Council may adopt to implement the priority guidelines in this section so as to ensure that court interpreters are provided in civil matters consistently with sound and efficient court administration and prudent personnel practices:

(A) Parties appearing in forma pauperis or whom the court otherwise determines are financially unable to pay the cost of an interpreter in the following order of precedence by case type:

(i) Actions and proceedings under Section 527.6 of the Code of Civil Procedure or under Division 10 (commencing with Section 6200) of the Family Code.

(ii) Actions and proceedings under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code) and actions and proceedings under Part 4 (commencing with Section 7800) of Division 12 of the Family Code.

(iii) Actions and proceedings for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code or a protective order has been granted or is being sought pursuant to Section 136.2 or pursuant to paragraph (2) of subdivision (a) of Section 1203.097 of the Penal Code.

(iv) Actions and proceedings involving the appointment or termination of a probate guardian under Part 2 of Division 4 (commencing with Section 1500) of the Probate Code.

(v) Actions and proceedings relating to unlawful detainer.

(vi) Actions and proceedings under the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code).

(vii) Actions and proceedings involving the appointment of a guardian or conservator.

(viii) Actions and proceedings with respect to claims alleging violation of civil rights.

1 (ix) Other actions and proceedings in family court.

2 (x) Other actions and proceedings in probate court.

3 (xi) Other limited civil actions and proceedings.

4 (xii) Other unlimited civil actions and proceedings.

5 (B) Parties appearing in propria persona.

6 (C) All other parties.

7 (3) When a court-provided interpreter is assigned to interpret
8 for a party, an interpreter shall also be provided to any witness
9 called by that party.

10 (4) If a party is charged a fee specifically for interpreter services
11 because sufficient funding or number of interpreters is not available
12 to assign a court-provided interpreter, any fees for the interpreter
13 shall be waived for a party who needs an interpreter for himself
14 or herself, or for a witness called by that party, and appears in
15 forma pauperis pursuant to Section 68511.3 of the Government
16 Code. If a party whose fees have been waived prevails in the action
17 or proceeding or obtains a monetary settlement of his or her claims,
18 the court may assess the amount of the waived fees either against
19 that party in any manner the court believes is compatible with the
20 party's financial ability, or assess those fees against another party
21 against whom the party whose fees and costs have been waived
22 would have been entitled to recover those fees had they not been
23 waived, and may order the other party to pay that sum to the court
24 or to the clerk and serving and levying officers respectively or
25 order the amount of the waived fees to be added to the judgment
26 and so identified by the clerk.

27 (5) This section shall not be construed to negate or limit any
28 right to an interpreter in a civil action or proceeding otherwise
29 provided by state or federal law.

30 (c) Except as provided in paragraph (3) of subdivision (b), in
31 any civil action in which an interpreter is required and provided
32 under this section, the court shall not commence proceedings until
33 the appointed interpreter is present and situated near the party and
34 his or her attorney. However, this section shall not prohibit the
35 court from doing either of the following:

36 (1) Issuing an order when the necessity for the order outweighs
37 the necessity for an interpreter.

38 (2) Extending the duration of a previously issued temporary
39 order if an interpreter is not readily available.

1 (d) This section does not prohibit the presence of any other
2 person to assist a party.

3 (e) The Judicial Council shall draft rules and modify forms
4 necessary to implement this section, including those for the petition
5 for a temporary restraining order and related forms, to inform both
6 parties of their right to an interpreter pursuant to this section.

7 (f) This section shall not be construed to alter the right of an
8 individual to an interpreter in criminal, traffic or other infraction,
9 juvenile, or mental competency actions or proceedings.

10 (g) New appointments of court interpreters in civil matters
11 pursuant to this section shall not result in a reduction in staffing
12 or compromise the quality of service in criminal, juvenile, or other
13 types of matters in which appointments have been made.

14 SEC. 5. Section 755.2 is added to the Evidence Code, to read:

15 755.2. (a) The Judicial Council shall conduct a study of the
16 need for court interpreters in civil proceedings and the extent to
17 which the need for interpreters is being met pursuant to Section
18 755.1 and shall report its findings and recommendations to the
19 Governor and the Legislature on or before March 1, 2011, and
20 every three years thereafter. The study shall include data showing,
21 by court, the languages for which parties and witnesses in civil
22 matters need a court-provided interpreter according to type of
23 action or proceeding and whether the party appears in propria
24 persona or in forma pauperis, as well as the extent to which each
25 of these needs is met by court employees or independent
26 contractors, certified or registered interpreters or, if not by a
27 certified or registered interpreter, then the type of case, location,
28 and language for which the noncertified interpreter was appointed,
29 that person's qualifications to interpret, and the circumstances
30 warranting good cause for appointment of a noncertified interpreter;
31 the amounts expended for each according to court, type of party,
32 and type of action or proceeding; the cost of failing to provide
33 interpreters in civil matters, including delays, continuances, faulty
34 interpretation, inappropriate defaults, and failure to comply with
35 court orders or instructions; and the fees apportioned and collected
36 from parties pursuant to paragraph (4) of subdivision (b) of Section
37 755.1. The report shall include findings and recommendations
38 regarding the need for additional interpreters and interpreter
39 compensation, whether the availability of interpreters or the
40 assessment of party fees has an impact on equal access to justice,

1 and the effect of court interpreters on court administration and
2 efficiency, including reduced courtroom time for hearings,
3 increased compliance with orders and court schedules, reduced
4 case delays, and enhanced coordination between courts and
5 culturally relevant services in the community.

6 (b) The Judicial Council shall adopt training guidelines so that
7 each trial court in the specified counties as determined by the
8 Judicial Council pursuant to subdivision (c), in consultation with
9 the exclusive representative of interpreters, ensures that court
10 interpreters receive any training necessary to comply with the
11 requirements of Section 755.1. Training activities may include,
12 but are not limited to, video broadcasts, Internet-based training,
13 and dissemination of written materials.

14 (c) The Judicial Council shall develop an implementation plan
15 for providing court interpreters in civil matters not currently served,
16 taking into account available resources. Subject to funding
17 specifically provided for this purpose, the Judicial Council shall
18 develop a model pilot program for purposes of Section 755.1 in
19 selected counties pursuant to a competitive grant process and a
20 request for proposals, with priority for unmet needs in types of
21 case and geographic areas with high concentrations of
22 limited-English-proficient parties and multiple language needs.
23 The counties shall be selected by a committee appointed by the
24 Judicial Council with representation from key stakeholder groups,
25 such as judicial officers, court interpreters, legal services providers,
26 and organizations representing individuals with limited English
27 proficiency. The committee shall assess applicants' capacity for
28 success, innovation, and efficiency, including, but not limited to,
29 strategies for collaborating with organizations representing
30 stakeholders, utilizing local resources, and methods for addressing
31 the availability of qualified interpreters, as well as enhancing
32 recruitment, development, and retention of certified interpreters,
33 particularly for those languages with a shortage of certified
34 interpreters in the service area.

1
2
3
4
5

**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, May 23, 2008. (JR11)**

O